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FS956

South Dakota
Cooperative Extension Service

South Dakota Requirements for the Sale of Baked Goods and Home-canned Processed Foods at Farmers Markets

Fresh, whole raw fruits and vegetables grown in South Dakota can currently be sold without any regulatory requirements. However, once a raw fruit or vegetable is processed, South Dakota law requires that certain regulations must be followed in order to ensure the safety of the product. During the 2010 legislative session, South Dakota lawmakers passed the "Home-Processed Foods Law," which approves home-processed foods sold at farmers markets, roadside stands, and similar venues from some of these licensure requirements. The new law, South Dakota Codified Law (SDCL) 34-18-34 thru 37, commonly referred to as the "Home-Processed Foods Law," specifically lifts the requirements that food processing be conducted in a state-licensed (and inspected) facility or "commercial kitchen," as long as the food is sold at a farmers market, roadside stand, or similar venue. However, as part of this new law, specific alternative requirements must still be met to ensure food safety. This fact sheet will explain the requirements of the "Home-Processed Foods Bill" exemption.

THE "HOME-PROCESSED FOODS LAW" ALLOWS THE FOLLOWING HOME-BAKED AND HOME-PROCESSED FOOD TO BE SOLD AT A FARMERS MARKET, ROADSIDE STAND, OR SIMILAR VENUE:

- Non-temperature-controlled baked goods that do not require refrigeration may include but are not limited to lefse, bread, rolls, fruit pies, candies and confectionaries, and cookies.
- Home-canned foods having an equilibrium pH value below 4.6 and meeting standards that destroy bacteria, yeast, and molds to a required level. Examples may include but are not limited to:
  - acid foods—jams, jellies, fruit syrups and most fruits
  - acidified foods (pickled/fermented) that also have a water activity greater than 0.85—pickled/fermented vegetables, salsas, chutneys
  - tomatoes have a pH that borderlines between low-acid and acid due to growing conditions and variety; therefore, acidification would be necessary
  - fermented foods—sauerkraut and pickles
- Some dried products (Some exceptions apply. See SDSU Fact Sheets FS961, "Drying Fruit, Vegetables and Herbs," at http://pubstorage.sdstate.edu/AgBio_Publicaitons/articles/FS961.pdf; and FS962, "Frequently Asked Questions Home Processed Food Law," at http://pubstorage.sdstate.edu/AgBio_Publicaitons/articles/FS962.pdf)
- All products must have official verification from a third-party processing authority in writing.
- All products must be properly labeled.

EXAMPLES OF PRODUCTS NOT ALLOWED UNDER THE "HOME-PROCESSED FOODS LAW":

- Home-canned, low-acid foods that do not meet the pH level of 4.6 or below, including but not limited to foods such as peas, green beans, beets, corn, carrots, squash or soups (that are not acidified [pickled/fermented])
- Whole eggs in the shell, fish, dairy or meat products such as smoked fish, butter, raw milk, or jerky—these products fall under regulatory jurisdiction of other

state or federal agencies. For information regarding these specific products, refer to FS962.

- Home-processed apple cider and other fruit juices (all juices must meet FDA requirements)
- Foods that require refrigeration (such as fresh salsa and pesto) and many food products containing milk or eggs (such as kuchen and pumpkin pie)
- Garlic and oil mixtures, or flavored oils
- Vegetables packed and frozen for preservation (Some exceptions apply. See FAQ sheet.)
- Refrigerator pickles, flavored vinegars
- Home-processed foods without proper labeling

MARKETING VENUES FOR SALE OF HOME-BAKED AND HOME-PROCESSED CANNED FOODS THAT MEET THE REQUIREMENTS OF THE "HOME-PROCESSED FOODS LAW":

- Food products covered by this statute can only be sold at farmers markets, roadside stands, and similar venues such as church and community bazaars or festivals.
- Food products allowed by this legislation are NOT allowed to be sold in establishments such as retail and grocery stores, restaurants, bed and breakfasts, wholesalers, or directly out of the home.
- The owner of the products can hire an employee to work at the farmers markets or roadside stands. The person hired to represent the stand shall be an employee of the producer, not of the marketing company or other vendor.
- The point of sale, which is defined by the Department of Revenue as the location where the purchaser takes possession of the product, must meet the requirements of the "Home-Processed Foods Law."

PROCESSING AUTHORITY:

A processing authority is a person or organization having expert knowledge of thermal processing requirements for foods in hermetically sealed containers. To operate as a processing authority, an individual must meet the following requirements:

- Have access to facilities for making such determinations.
- Have extensive knowledge and experience of labeling for ingredients, product formulations, and utilization of approved equipment to meet the standards for USDA home-processing methods.
- Have the capacity to recognize processes for preserving foods that will meet the standards and recommendations of the USDA to reduce food-borne illness risks associated with home-processed acid and acidified foods.

ACID FOODS (LEVEL 1) AND ACIDIFIED (PICKLED/FERMENTED) FOODS (LEVEL 2) PROCESSING AUTHORITIES:

To ensure that the various food products are properly tested and approved by qualified processing authorities, while also offering as much ease of accessibility to producers/vendors across the state as possible, a two-level processing authority system has been established. This system functions as follows:

ACID FOODS (LEVEL 1) PROCESSING AUTHORITY

At a minimum, acid (Level 1) processing authorities must complete an 8-hour training course offered by South Dakota Cooperative Extension Service. The course qualifies them to test jams and jellies or "**acid foods.**" The course covers the following information:

1. food preservation
2. pH meters—purchasing, and demonstrate proper use
3. "The Home-Processed Foods" SDCL 34-18-34 thru 37 requirements
4. reviewing processing methods and forms
5. letters of verification
6. responsibility of processing authority

ACIDIFIED (PICKLED/FERMENTED) FOODS (LEVEL 2) PROCESSING AUTHORITY

To serve as a processing authority for **"acid**" and "**acidified foods** (*pickled/fermented*)" such as pickles, salsa, etc., a minimum additional training course that covers food preservation principles and recommended practices of acidified foods must be completed. An example of this kind of course is "The Food Processing Centers Acidified Foods Better Process Control School" held by the University of Nebraska–Lincoln. Additionally, the Level 2 processing authority must utilize an independent lab, qualified for food testing, in which equipment for the food testing is installed, standardized, and maintained in accordance with manufacturer specifications. If an individual has successfully completed the Better Process Control School at the University of Nebraska–Lincoln or an equivalent course, they have met the requirements of the "Home-Processed Foods Law" to serve as a processing authority for both "**acid**" and "**acidified**" foods.

ACID AND ACIDIFIED FOODS

If an individual has successfully completed the Better Process Control School at the University of Nebraska–Lincoln, they have met the requirements to serve as a processing authority for both acid and acidified foods within the state of South Dakota to meet the requirements.

RECOGNIZED ACIDIFIED (PICKLED/FERMENTED) FOODS (LEVEL 2) FOOD PROCESSING AUTHORITIES:

South Dakota State University
SNF Rm 425, Box 2275A
Brookings, SD 57006
(605) 688-5161 or (605) 688-6233
Joan Hegerfeld-Baker
Joan.hegerfeld-baker@sdstate.edu

University of Nebraska–Lincoln
The Food Processing Center
143 Food Industry Complex
Lincoln, NE 68583
(402) 472-2829
Jayne Stratton, PhD.
jstratton1@unl.edu

Kansas State University
Kansas Value Added Foods Lab
Animal Sciences Industry
Room 139 Call Hall
Manhattan, KS 66506
(785) 532-1668
Dr. Fadi M Aramouni
aramouni@ksu.edu

Check with your local county Extension office or with Dakota Rural Action for a list of additional approved processing authorities in your area.

LABELING REQUIREMENTS:

Each food container sold must have a label that contains the following:

- name of product
- name of producer and contact information
- date the product was made or canned
- ingredients (list ingredients in the product from the largest to the smallest in net weight or volume; actual weight or volume of ingredients do not need to be listed)
- a disclaimer that states the following: "This product was not produced in a commercial kitchen. It has been home-processed in a kitchen that may also process common food allergens such as tree nuts, peanuts, eggs, soy, wheat, milk, fish, and crustacean shellfish."

For labeling, use a font size that is prominent, conspicuous, and easy to read.

LETTER OF VERIFICATION:

The individual selling of home-processed (canned) foods under this exemption must have the letter of verification from the third-party processing authority approving the method of processing and documentation that the pH and/or water activity standards are met. A copy of the letter of verification for all products must be at each location where products are sold.

The letter of verification will include the following:

- name of the food processor
- food item as it appears on the jar label
- size of the food container
- results of pH and/or water activity testing
- approval of the thermal processing method
- results of microbial analysis (if conducted)
- date tests were completed
- date letter of verification is issued
- signature and contact information of the food-processing authority

COSTS OF VERIFICATION AND TESTING:

Fees will vary depending upon the following:

1. The type of testing required for the products (analytical services)—pH, water activity, and/or microbial testing
2. Third-party processing authority—review of processing method and letter of verification

Acid foods require a pH test and, possibly, a water-activity test, particularly if the pH is either greater than 4.6 or just slightly lower. Acidified foods will require equilibrium pH testing, water activity testing, and, most likely, a microbial analysis.

Because cost of verification and testing will vary depending on the processing authority and testing (analytical) services, it is suggested that processors contact processing authorities directly for specific prices.

HOW TO SUBMIT PRODUCT SAMPLES FOR TESTING:

The processing authority will need samples and a written explanation of method used for each product to be tested. Contact a processing authority for specific information on submitting samples.

ADDITIONAL DEFINITION OF TERMS:

Thermal processing is the application of heat to a food, either before or after sealing in a hermetically sealed container, for a period of time and at a temperature scientifically determined to achieve a condition of commercial sterility (i.e., the destruction of microorganisms of public health significance as well as those capable of reproducing in the food under normal non-refrigerated conditions).

A **hermetically sealed** container is a container that is designed and intended to be secure against the entry of microorganisms and to maintain the commercial sterility of its contents after processing. For home-processing purposes, a hermetically sealed container will consist of a two-piece lid and glass jar.

pH measures the amount of acidity or alkalinity, using a numerical scale between 0 and 14. A pH value of 1 is most acidic, while a pH value of 14 is most basic or alkaline.

An **acid food** is a food that has a natural pH of 4.6 or below.

A **low-acid food** is any food (other than alcoholic beverages) with a finished equilibrium pH greater than 4.6 and a water activity greater than 0.85, excluding tomatoes and tomato products having a finished equilibrium pH less than 4.7.

An **acidified food** (pickled/fermented) is a low-acid food to which acid(s) or acid food(s) are added and which has a finished equilibrium pH less than 4.6 or below and a water activity greater than 0.85.

Equilibrium pH is the final pH of a food product after the acidulant (food acid) reaches equilibrium (i.e., has the same pH value) with the food itself. (For example, fresh cucumbers in vinegar will not have the same pH as the vinegar until equilibrium has been obtained.) Acidified foods that are 2 months past the processing date will have reached equilibrium, and the brine should have the same pH as the primary food ingredients.

Water activity is a measure of the free moisture in a product. This moisture is available for microbial growth. Water activity values range from 0 to 1; 0 is considered bone-dry, and 1 is pure water.

Pickled and fermented foods are classified by ingredients and method of preparation into four general classes:

1. Brined or fermented go through a curing process in a brine (salt and water) solution for one or more weeks. Curing changes the color, flavor and texture of the product. If the product is fermented, the lactic acid produced during the fermentation helps preserve the product. In brined products that are cured but not completely fermented, acid in the form of vinegar is added later to preserve the food.
2. Fresh Pack or Quick Process Pickles are covered with boiling hot vinegar, spices and seasonings. Sometimes, the product may be brined for several hours and then drained, before being covered with the pickling liquid. These are easy to prepare and have a tart flavor. Fresh pack or quick pickles have a better flavor if allowed to stand for several weeks after they are sealed.
3. Fruits Pickles are prepared from whole or sliced fruits and simmered in spicy, sweet-sour syrup.
4. Relishes are made from chopped fruits and vegetables cooked to desired consistency in a spicy vinegar solution.

The level of acidity (pH less than 4.6) in a pickled product is as important to its safety as to its taste and texture. Never alter the proportion of vinegar, food or water in a recipe and use only tested recipes to prevent the growth of *Clostridium botulinum*.

This document was jointly produced by the South Dakota Department of Health (SDDOH), the South Dakota Cooperative Extension Service (SDCES) and Dakota Rural Action (DRA):

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